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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 MICHAEL DENTON,

12 v.
13 Plaintiff,

14 PASTOR, JAMES-HUTCHISON,
15 CARUSO, MARVIN SPENCER,

16 Defendants.

17 CASE NO. 3:16-CV-05314-RJB-DWC

18 REPORT AND RECOMMENDATION

19 Noting Date: September 22, 2017

20 The District Court has referred this action, filed pursuant to 42 U.S.C. § 1983, to United
21 States Magistrate Judge David W. Christel. Currently pending before the Court are Plaintiff
22 Michael Denton's Motions entitled "Emergency" and "Motion to Order Defendants to Return
23 Plaintiff's Legal Documents Seized by Defendant Charla James Hutchinson" ("Motions"). Dkt.
24 106, 109. The Court finds Plaintiff is requesting injunctive relief against Pierce County Jail
employees and has been transferred to a different facility. As is no longer housed at Pierce
County Jail, the Court recommends Plaintiff's Motions (Dkt. 106, 109) be denied as moot.

BACKGROUND

Plaintiff, an inmate housed at Monroe Correctional Complex (“MCC”), alleges his rights were violated when: (1) Defendants Lieutenant Charla James Hutchinson and Sergeant Caruso denied Plaintiff due process when they revoked his good time credits; and (2) Defendants Pastor and Spencer created a policy which denied Plaintiff incoming publications. Dkt. 99.¹ In his Motions, Plaintiff states Defendants took his legal materials when he was transferred to Western State Hospital and requests the Court order Defendants to return his legal materials to him. Dkt. 106, 109. Plaintiff is essentially requesting the Court order Defendants to not interfere with his access to the courts.

10 Plaintiff initiated this lawsuit against employees at Pierce County Jail. Dkt. 4. In May of
11 2017, Plaintiff was transferred to Western State Hospital for a mental evaluation pursuant to a
12 state court order. *See* Dkt. 113-5; 113-6. Plaintiff was returned to Pierce County Jail on June 2,
13 2017. *See* Dkt. 116, 127. The Pierce County Prosecuting Attorney's Office provided notice to the
14 Court on June 12, 2017 that Plaintiff had been transferred to Department of Corrections custody
15 and was being housed in the MCC. Dkt. 117. Plaintiff filed notice of his change of address as
16 being at MCC on June 14, 2017. Dkt. 119.

DISCUSSION

18 “[W]hen a prisoner is moved from a prison, his action will usually become moot as to
19 conditions at that particular facility.” *Nelson v. Heiss*, 271 F.3d 891, 897 (9th Cir. 2001); *Dilley*
20 *v. Gunn*, 64 F.3d 1365, 1368 (9th Cir. 1995) (“An inmate’s release from prison while his claims
21 are pending generally will moot any claims for injunctive relief relating to the prison’s policies
22 unless the suit has been certified as a class action.”). An exception to the mootness doctrine

¹ On May 1, 2017, Plaintiff filed a Second Amended Complaint. Dkt. 99. The Second Amended Complaint is the operative pleading in this case and is a complete substitute for any previously filed complaints. See Dkt. 93.

1 exists if a plaintiff shows there is a “reasonable expectation” or “demonstrated probability” he
2 will return to the prison from which he was transferred. *See Darring v. Kincheloe*, 783 F.2d 874,
3 876 (9th Cir. 1986).

4 In his Motions, Plaintiff alleges conduct at Pierce County Jail deprived him of his access
5 to the courts while he was housed at Western State Hospital and requests injunctive relief only as
6 to conduct occurring at Pierce County Jail and Western State Hospital. *See* Dkt. 106, 109. On
7 June 12, 2017, the Court received a notice Plaintiff had been transferred to MCC. Dkt. 117, 119.
8 As Plaintiff has been transferred, Defendants--all of whom are Pierce County Jail employees--
9 cannot continue to block Plaintiff’s access to the courts and deny Plaintiff access to his legal
10 materials. Plaintiff alleges he is challenging his conviction and may return to Pierce County Jail
11 for a new trial. Dkt. 128. However, Plaintiff has not shown he has been awarded a new trial or
12 shown that he has had any success in challenging his conviction. Therefore, Plaintiff has not
13 shown a demonstrated probability that he will be returned to Pierce County Jail. Therefore, the
14 Motions are moot.

15 If Plaintiff returns to Pierce County Jail, he is free to file a new motion to reflect his
16 changed circumstances at that time. *St. Hilaire v. Arizona Department of Corrections*, 934 F.2d
17 324, *1 (9th Cir. 1991). The Court notes, however, the claims alleged in the Motions are
18 unrelated to the allegations contained in his Second Amended Complaint. *See* Dkt. 99, 106, 109.
19 In the Second Amended Complaint, Plaintiff contends Defendants violated his rights when they
20 revoked his good time credits and created a policy which denied him access to his incoming
21 publications. *See* Dkt. 99. In the Motions, Plaintiff contends Defendants denied him access to his
22 legal materials and access to the courts. Dkt. 106, 109. As such, the Court finds the allegations
23 and preliminary injunctive relief raised in the Motions are wholly unrelated to the claims alleged
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1 in the Second Amended Complaint. Therefore, the Court would be unable to issue the injunctive
2 relief requested. *See Pac. Radiation Oncology, LLC v. Queen's Med. Ctr.*, 810 F.3d 631, 633 (9th
3 Cir. 2015) ("When a plaintiff seeks injunctive relief based on claims not pled in the complaint,
4 the court does not have the authority to issue an injunction.").

5 **CONCLUSION**

6 As Plaintiff's transfer to MCC moots his requests for injunctive relief, this Court
7 recommends Plaintiff's Motions (Dkt. 106, 109) be denied as moot.

8 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil
9 Procedure, the parties shall have fourteen (14) days from service of this Report to file written
10 objections. *See also Fed. R. Civ. P. 6.* Failure to file objections will result in a waiver of those
11 objections for purposes of appeal. *Thomas v Arn*, 474 U.S. 140 (1985). Accommodating the time
12 limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on
13 September 22, 2017, as noted in the caption.

14 Dated this 1st day of September, 2017.

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17 David W. Christel
18 United States Magistrate Judge
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